



Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bills 700, 701, 703, 706, 707, 710, and 712 (as reported without amendment) (as enacted)
House Bills 4683, 4684, 4686, 4687, 4695, and 4696 (as reported without amendment) (as enacted)

Sponsor: Senator Alan L. Cropsy (S.B. 700)
Senator Randy Richardville (S.B. 701)
Senator Roger Kahn, M.D. (S.B. 703)
Senator Dennis Olshove (S.B. 706)
Senator Buzz Thomas (S.B. 707)
Senator Wayne Kuipers (S.B. 710)
Senator Patricia L. Birkholz (S.B. 712)
Representative Roy Schmidt (H.B. 4683)
Representative David Nathan (H.B. 4684)
Representative Goeff Hansen (H.B. 4686)
Representative Tonya Schuitmaker (H.B. 4687)
Representative Ed Clemente (H.B. 4695)
Representative Andy Coulouris (H.B. 4696)

Senate Committee: Banking and Financial Institutions

House Committee: Commerce (H.B. 4683, 4684, 4686, 4687, 4695 & 4696)

Date Completed: 8-11-09

RATIONALE

The Uniform Securities Act regulates the issuance, sale, and purchase of securities, including stocks, bonds, and other financial instruments. The Act, which took effect in 1964, was developed from model legislation proposed in 1956 by the National Conference of Commissioners on Uniform State Laws (NCCUSL), an organization that works to encourage consistency among state laws. In the nearly 40 years since the current Uniform Securities Act was enacted, security markets have evolved considerably. To address those changes, Public Act 551 of 2008 repeals the Uniform Securities Act, replacing it with the Uniform Securities Act (2002), based on model legislation approved by NCCUSL in 2002. The new Act will take effect on October 1, 2009.

The Office of Financial and Insurance Regulation (OFIR) has pointed out that a number of statutes refer to the original Uniform Securities Act, and OFIR has recommended that those references be replaced with references to the newly enacted law before it takes effect.

Senate Bill 701

CONTENT

The bills would amend different statutes to refer to the Uniform Securities Act (2002) in provisions that currently refer to the Uniform Securities Act.

The bills are described in detail below.

Senate Bill 700

The bill would amend the Michigan Consumer Protection Act. The Act permits the Director of the Department of Energy, Labor, and Economic Growth to investigate a person subject to the Uniform Securities Act, the Business Corporation Act, or the Franchise Investment Law, if the Director believes the person has engaged, is engaging, or is about to engage in an unlawful method, act, or practice under the Consumer Protection Act. The bill also would refer to the Uniform Securities Act (2002).

The bill would amend Public Act 227 of 1971, which regulates home solicitation

sales of goods and services of more than \$25. As used in the definition of home solicitation sales, "goods and services" does not include a sale of a security or interest in a security that is subject to the Uniform Securities Act. Under the bill, that definition also would exclude a security that is subject to the Uniform Securities Act (2002).

Senate Bill 703

The bill would amend the Nonprofit Corporation Act. The Act permits a cooperative to offer to its members or to the general public any form of nonvoting investment certificate or bond that may bear interest or dividends, subject to the Uniform Securities Act. Under the bill, such an offering also would be subject to the Uniform Securities Act (2002).

Senate Bill 706

The bill would amend the Savings and Loan Act to revise the definition of "securities". The Act permits an association or a service corporation established by an association to provide brokerage services for the offer, sale, or purchase of securities or commodity contracts. For the purpose of that provision, "securities" means that term as defined in Section 401 of the Uniform Securities Act. Under the bill, "securities" would mean that term as defined in Section 102c of the Uniform Securities Act (2002).

(That definition is similar to the earlier definition except that it includes uncertificated securities; it includes puts, calls, straddles, options, or privileges on a security, certificate of deposit, or group of securities; and it may include, as an investment contract, an interest in a limited partnership, limited liability company, or limited liability partnership. The term does not include interest in a pension or welfare plan under the Employees Retirement Income Security Act.)

The bill would take effect on October 1, 2009.

Senate Bill 707

The bill would amend the Michigan Education Trust Act to exempt an advance tuition

contract from the Uniform Securities Act (2002). Currently, an advance tuition contract is exempt from the Uniform Securities Act.

Senate Bill 710

The bill would amend the Credit Services Protection Act to revise the definition of "credit services organization". Currently, that term does not include an investment adviser or broker-dealer registered under the Uniform Securities Act. Under the bill, it also would not include those registered under the Uniform Securities Act (2002).

Senate Bill 712

The bill would amend Part 215 (Refined Petroleum Fund) of the Natural Resources and Environmental Protection Act. Under Part 215, a bond or note of the Michigan Underground Storage Tank Financial Assurance Authority (MUSTFAA) is not required to be filed under the Uniform Securities Act. Under the bill, a MUSTFAA bond or note also would not have to be filed under the Uniform Securities Act (2002).

House Bill 4683

The bill would amend the Professional Service Corporation Act (PSCA) to indicate that the Uniform Securities Act (2002) would not apply to the issuance or transfer by a corporation organized under the PSCA of securities issued to the corporation. Currently, the Uniform Securities Act does not apply to such an issuance or transfer.

House Bill 4684

The bill would amend the Michigan Export Development Act to provide that a filing of a bond of the Michigan Export Development Authority would not be required under the Uniform Securities Act (2002). Currently, a filing of a bond of the Authority is not required under the Uniform Securities Act.

House Bill 4686

The bill would amend the Michigan Penal Code to revise the definition of "racketeering". Under the Code, that term means committing or attempting or conspiring to commit, or abetting, soliciting, coercing, or intimidating a person to commit any of certain offenses for financial gain,

including a violation of Section 409 of the Uniform Securities Act. (Under that section, a person who is convicted of willfully violating certain provisions of the Act is subject to a fine of up to \$25,000 for each violation, up to 10 years' imprisonment, or both.)

The bill also would refer to a violation of Section 508 of the Uniform Securities Act (2002). (Under Section 508, a person who willfully violates the Act or a rule or order issued under the Act, with certain exceptions, is guilty of a felony punishable by a fine of up to \$500,000 for each violation or imprisonment for up to 10 years, or both.)

(The Code prohibits certain conduct related to "a pattern of racketeering activity". A violation is a felony punishable by imprisonment for up to 20 years, a maximum fine of \$100,000, or both.)

Under the Penal Code, a person may not knowingly receive or acquire a monetary instrument or other property that constitutes the proceeds of a specified criminal offense, or conduct or participate in a financial transaction involving the proceeds of a specified criminal offense. "Specified criminal offense" includes a violation of Section 409 of the Uniform Securities Act concerning securities fraud. Under the bill, a violation of the Uniform Securities Act (2002) also would be a specified criminal offense.

House Bill 4687

The bill would amend Chapter 47 of the Revised Judicature Act to include a violation described in Section 508 of the Uniform Securities Act (2002) in the definition of "crime", which currently includes a violation described in Section 409 of the Uniform Securities Act.

(Under Chapter 47, property that is the proceeds or instrumentality of a crime is subject to seizure by, and forfeiture to, a local unit of government or the State.)

House Bill 4695

The bill would amend the Public Employee Retirement System Investment Act. Under

the Act, an investment fiduciary who renders investment advice for a retirement system for a fee or other compensation must be a bank, a qualified insurance company, or a registered investment adviser under the Investment Advisers Act or the Uniform Securities Act. The bill also would refer to the Uniform Securities Act (2002).

House Bill 4696

The bill would amend the Michigan Strategic Fund Act. The Act provides that a filing of a bond or note of the Strategic Fund is not required under the Uniform Securities Act. Under the bill, a filing also would not be required under the Uniform Securities Act (2002).

MCL 445.920 (S.B. 700)
445.111 (S.B. 701)
450.3137 (S.B. 703)
491.515 (S.B. 706)
390.1439 (S.B. 707)
445.1822 (S.B. 710)
324.21528 & 324.50510 (S.B. 712)
450.228 (H.B. 4683)
447.160 (H.B. 4684)
750.159g & 750.411j (H.B. 4686)
600.4701 (H.B. 4687)
38.1133 (H.B. 4695)
125.2023 (H.B. 4696)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bills simply would update references to the Uniform Securities Act, preventing unnecessary confusion and ensuring that all current provisions remain in effect when the Uniform Securities Act (2002) takes effect on October 1, 2009.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

Senate Bills 700, 701, 703, 706, 707, 710, and 712 and House Bills 4683, 4684, 4687, 4695 and 4696

The bills would have no fiscal impact on State or local government.

House Bill 4686

The bill would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders will be convicted of violating Section 508 of the Uniform Securities Act (2002). If the bill led to additional convictions of racketeering offenses, local governments would incur the costs of incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$32,000. Additional penal fine revenue would benefit public libraries.

Fiscal Analyst: Lindsay Hollander
Elizabeth Pratt
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.